Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Developing a Unified Intercarrier Compensation Regime	))))	CC Docket No. 01-92

INITIAL COMMENTS
OF
THE WYOMING OFFICE OF CONSUMER ADVOCATE
(Submitted May 23, 2005)

The Wyoming Office of Consumer Advocate (Wyoming OCA) is an interested party in this proceeding, as we are charged with representing the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. Our interest in this proceeding focuses on our desire to see the Federal Communications Commission (Commission) work toward a solution to the current intercarrier compensation dilemma that: keeps basic local service rates affordable, does not provide a competitive advantage to any group or type of carriers, and does not provide a disincentive to investment in either local or advanced services networks.[1] While it may seem nearly impossible to balance each of these goals, in our view, some of the proposed plans provide a better balance than others. In this regard, we will not attempt to discuss each nuance of the multitude of proposals referenced in the *Further Notice of Proposed Rulemaking* (Further Notice) but will focus our comments on: bill-and-keep, the National Association of State Utility

[1] These are similar to the Further Notice's stated goals, which are delineated starting at paragraph 29: the promotion of economic efficiency, the promotion of facilities based competition, the preservation of universal service, competitive and technological neutrality, regulatory certainty, limited regulatory intervention, and the equal application of rules for similar types of traffic.

Consumer Advocates' (NASUCA) proposal, and the National Association of Regulatory Utility Commissioners' (NARUC) proposal. We believe that the NASUCA and NARUC plans offer the best starting points for discussing the basic elements that need to be contained in a workable, balanced, and comprehensive plan. However, neither plan would satisfy the needs of Wyoming without further modification or supplementation, as we will discuss in more detail below.

Principles to be Reexamined

In its Further Notice, released March 3, 2005, the Commission identifies three basic principles[2] that underlie the current intercarrier compensation regime that need to be reexamined:

1) The existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services.
2) The existing compensation regimes are predicated on the recovery of average costs on a per-minute basis.
3) Under the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call.

As much of the Further Notice is premised on the responses to these fundamental principles, the Wyoming OCA wishes to provide its thoughts on these matters prior to commenting on specific proposals.

The first principle relates to the current jurisdictional and regulatory distinctions. We see a number of differences that fall under this category, including:

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[2] These three principles are more fully described in paragraphs 15, 16, and 17 of the Commission's Further Notice, adopted February 10, 2005, and released March 3, 2005.

a. The partitioning of regulatory and market oversight responsibilities between interstate and intrastate agencies,

b. The differentiation of compensation arrangements based simply on the type of carrier rather than the type of traffic, and

c. The classification of different technologies into different regulatory regimes, regardless of the type of service being provided.

The division of regulatory oversight is founded in historical practices, services, and technologies. We agree that the lines between interstate and state jurisdictions and services are becoming blurred and more difficult to distinguish – often requiring artificial categorization.[3] However, it must also be recognized that the historical practices that drove the state/interstate categorization are codified in federal and state laws and regulations that cannot be brushed aside or modified overnight. Even if all the parties agreed that it made sense to enact significant changes to the roles of the federal and state regulatory agencies, it would take legislative and/or Congressional change to effectuate that agreement. For example, several of the proposals suggest that either the Commission take – or the states offer – jurisdiction over certain rates and services that are currently the purview of state regulatory authority (e.g., intrastate switched access). Yet, we do not believe that the Wyoming Public Service Commission has the legal authority to turn over its pricing oversight responsibilities to another regulatory body. This is a troubling aspect of a few of the proposals wherein certain pricing currently subject to the jurisdiction of the states would now be handled entirely at the federal level. Adoption of such a proposal would simply be asking for trouble – and one gigantic lawsuit.

[3] For example, the announcement that internet traffic is an interstate service without a reassignment of the separations factors or cost allocations assigned to that traffic has significantly blurred the interstate/intrastate oversight arrangements.

We agree that compensating the traffic of different types of carriers in different ways, even though the traffic all serves the same function and travels over the same network, is an undesirable aspect of the current system. We agree with the Further Notice that the uneconomic arbitrage opportunities caused by this are disturbing and should be eliminated. We also agree that there is no economic basis for the disparity of compensation associated with this artificially defined difference.

The third point of technological categorization is more difficult to get a handle on, as the pace at which the new technologies are developed and offered commercially is being done at an ever-increasing speed. It is also the factor most likely to create competitive disadvantages. When a new technology is deemed to be *hands-off* simply because it is new – even before it is fully examined to see whether it is providing the same or essentially equivalent service, from the customers' perspective, as an older technology (e.g., local service over traditional landline equipment versus voice over the internet protocol) -- it may gain a tremendous competitive benefit from that decision to treat it in a non-traditional manner. Yet, anecdotal evidence is starting to appear that customers do not make the same technological differentiation – it is all used to carry voice calls to a friend or family member or emergency provider.

The second principle identified in the Further Notice relates to the recovery of average costs on a per-minute basis. We agree with the Commission that the continued widespread use of per-minute pricing is ripe for discussion. However, it must be recognized that even if cost recovery was changed from a per minute basis to a non-traffic sensitive basis, such as per line or per customer, some averaging will still exist. Momentarily assuming that there is agreement that more and more of the network costs fall into the *fixed cost* rather than *volume (traffic) sensitive* bucket, it makes sense that the way that the cost is collected from customers should be collected on a per unit basis rather than solely on units of time. However, the cost to be recovered will still be an average cost for that customer or line. It would be unreasonable to think otherwise as there is no way to measure the cost of the service to each individual customer – whether it is the cost of the local loop to the end user or the cost of switched access to individual interexchange carriers. Some level of averaging will always exist.

With this clarification, the Wyoming OCA advocates reexamining the identified cost basis to which the charge will be attached (e.g., lines counts, customer counts, etc.) We have already done much of this reexamination at the local level, as we removed the carrier common line element from intrastate switched access rates and moved those costs to local end user rates. There is clearly a technical basis upon which to make a similar move with interstate access rates. However, this must only be done with a recognition that as more and more costs are moved to a flat rated charge, low volume users will be the hardest hit, and rate affordability issues will need to be explicitly addressed.

The third principle is that the calling party's carrier pays for terminating the call. We find the discussion on this issue thought provoking and agree that the cost drivers need to be reexamined. However, it is an oversimplification to simply assume that the existence of call management devices (i.e., Caller ID, do not call lists, etc.) shift the call termination costs to the called party to the degree assumed by the Further Notice. This is not obvious to us, and such a statement[4] seems to presume the answer.

[4] See paragraph 17 of the Further Notice which states, in part: "Developments in the ability of consumers to manage their own telecommunications services undermine the premise that the calling party is the sole cost causer and should be responsible for all the costs of a call."

Bill-and-Keep

Bill-and-keep is a network use compensation arrangement in which carriers do not charge each other for the origination and termination of traffic. Rather carriers recover all their costs from their subscribers.[5] That is, end users pay for the benefit of making and receiving calls, with the assumption that both the calling party and the called party may benefit from any given call.

Although a bill-and-keep regime would provide for simple administration of intercarrier compensation relative to a reciprocal compensation arrangement, a national unified bill-and-keep regime is contrary to several provisions of the 1996 Telecommunications Act (the Act) and would create distortions in the market. Arbitrage opportunities embedded in the current intercarrier compensation regime should be eliminated, but not if the result is the creation of new arbitrage opportunities. Furthermore, the adoption of a blanket bill-and-keep regime is inconsistent with the requirements of the Act and can be discriminatory, inefficient and impede competition. A bill-and-keep compensation arrangement is not in the public interest and should not be adopted as a result of this proceeding.

As noted in the Further Notice, there is currently an incentive for uneconomic arbitrage as reciprocal compensation and access charges compensate at different rates for different carriers the same task of completing calls on the network not owned by the originator of the call. Under bill-and-keep, the variation in rates for the same event would be eliminated – as there would no longer be any rate at all! However, the elimination of any payment between carriers for the origination or

[5]See Further Notice, Appendix C, *A Bill-And-Keep Approach to Intercarrier Compensation Reform.*

termination of traffic creates new arbitrage opportunities while simultaneously providing disincentives for network investments. Consider a different scenario other than whether a carrier would pay a reciprocal compensation rate or a terminating access rate. Instead consider the scenario where the carrier has the option of investing in some of its own equipment and facilities, which is then *interconnected* to a second carriers' network versus "riding" on someone else's network, for which no payment need be made. In this scenario, the interconnection rate would be based on TELRIC, and allows the carrier to whom the new equipment is being interconnected to collect a reasonable profit, as well as costs of providing the service. Alternatively, under bill-and-keep, the free-rider would pay nothing, would not have to provide any return to the facilities based carrier for its investment, and would not have to make its own investment. In our example, both carriers are disincented to invest in new or upgraded facilities, absent a strong influence from other sources (e.g., universal service funds.) This would be a direct conflict to the Commission's policy of promoting facilities-based competition in the marketplace.[6]

In addition, the carrier would be forced to transfer the cost of transporting and terminating traffic initiated outside of the network to its local customers. Proponents of the bill-and-keep approach express concern that a calling party pays approach allows a provider to shift costs of the network to other networks.[7] Yet, this is exactly the shift that occurs, when the costs caused by the calling party are paid by the called party. Not only would bill-and-keep shift the cost recovery away from the cost causing carrier (the calling party's carrier and the carrier receiving the revenue for the call), but in many cases

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[6] See Further Notice at paragraph 31: "Indeed one of the Commission's most important policies is to promote facilities-based competition in the marketplace."

[7] See Appendix C to the Further Notice, at page 101: "First, as explained above, we believe that a CPNP approach is problematic in a competitive marketplace because it allows networks to shift costs to other networks."

would shift the cost recovery from one category of service (toll) to another (local).

The proponents of bill-and-keep try to divert one's attention from the cost shifting issues by discussing *value of service* instead. There is extensive discussion in Appendix C of the Further Notice about who receives the most benefit, if any, from the call. Is it the calling or the called party or both? But, this is a serious and disquieting departure from the more appropriate cost causation method of setting rates that has been adopted and strongly advocated by the Commission over the past several years. The Wyoming OCA urges the Commission to maintain its policy of basing compensation arrangements on cost causation principles.

The Wyoming OCA is also concerned about the lack of any discussion regarding disproportionate costs of transport incurred by rural carriers versus more urban carriers. For example, Wyoming has moved to a regulatory regime of eliminating as many implicit subsidies as possible, including subsidies historically found in intrastate switched access charges. Yet, we still have some switched access rates for several of our rural incumbent carriers that are more than $0.07 per minute. These costs are driven by the many miles that the rural carrier must transport a call from the toll carrier's meet point where the call is handed-off. With Wyoming's rural customers already burdened by the costs of high distances and low densities associated with basic local services, it is difficult to imagine local rates would continue to comply with the universal service principles found in 47 U.S.C. 254(b)(1) and (3) if high transport costs were added to the already high local loop costs.

In the Further Notice, the Commission stated that it agreed with commenters that "*any new approach should promote economic efficiency.*"

and, "*any new approach should encourage the efficient use of an investment in telecommunications networks, and the development of efficient competition*."[8] The Commission went on to state "*one of the Commission's most important policies is to promote facilities-based competition in the marketplace*"[9] by "*creating a technologically and competitively neutral intercarrier compensation regime that is consistent with network developments.*"[10] The plain fact is that a bill-and-keep arrangement does not promote economically efficient use of the investment or efficient competition. A bill-and-keep arrangement may incent carriers to inefficiently use the network of a terminating carrier because there is no incentive for carriers using the network to try to minimize their cost of transport or termination. Carriers that use the network of other carriers to transport and terminate traffic under a bill-and-keep regime may not have the incentive to transport traffic in the most efficient manner by not locating its interconnection point in the most efficient location resulting in longer transport costs to the carrier's with which they interconnect. Carriers may also attempt to cherry pick to procure customers that primarily terminate traffic such as a call center.

The Commission would be required to forbear from enforcing 47 U.S.C. 251(b)(5) in order to institute a unified bill-and-keep regime. Additionally, the Commission would have to forbear from 47 U.S.C. 252(d)(2). In order to forbear from these sections, the Commission must determine that:

1. Enforcement of the regulation or provision is not necessary to insure that charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or

[8] See Further Notice at paragraph 31.

[9] See Further Notice at paragraph 31.

[10] See Further Notice at paragraph 146.

telecommunication service are just and reasonable and are not unjustly or unreasonably discriminatory;

2. Enforcement of such regulation or provision is not necessary for the protection of consumers; and
3. Forbearance from applying such provision or regulation is consistent with the public interest.[11]

The Wyoming OCA fails to see how the Congressionally mandated criteria can be met in order to permit the required forbearance. For example, it would be impossible to make a finding that the charges and practices associated with call termination would be just and reasonable if they are unregulated[12], especially in light of the Commission's admission that these services are still monopoly services.[13] The obligation to enter into reciprocal compensation arrangements in Section 251(b)(5) ensures just and reasonable rates, based on a cost causation principle, protects customers and is in the public interest. It also establishes efficient use, maintenance and investment of the network, which ensures a reliable network, a platform for competition, reasonable rates, and public safety.

NASUCA Proposal

[11] 47 U.S.C.160(a)

[12] Appendix C to the *Further Notice,* at page 106: "Given that a CPNP regime requires regulation of both retail and wholesale rates, while bill-and-keep requires only retail rate regulation, bill-and-keep would appear to require substantially less regulatory intervention."

[13] Appendix C to the *Further Notice,* at page 106: "Indeed, our experience with CPNP regimes demonstrates the need for substantial regulation of terminating charges because of the terminating access monopoly. Because the terminating carrier controls the only line and local switch connecting the called party to the network, that carrier has strong incentives to extract as high a payment as possible from the calling party's carrier."

NASUCA offers a proposal[14] wherein intercarrier compensation rates would be phased down over a five year period to $0.0055 per minute for non rural carriers, with a higher rate for rural carriers (e.g., $0.0095 per minute). States would be encouraged, but not mandated, to match the interstate target rates. Any demonstrated need for additional interstate funding should come from the existing federal universal service mechanism, but only after careful consideration given the current size of the factor funding the federal support. No additional federal funding should be authorized that is caused by changes in intrastate rates. Finally, NASUCA proposes that this situation should again be assessed at the end of five years to evaluate the then current state of the industry.

The Wyoming OCA agrees with the following attributes of the NASUCA proposal:

a. There should be recognition of the costs caused by carriers that transport and terminate traffic over another carrier's network,
b. Recognition of the cost differences of rural versus urban carriers by a two tier unified rate structure and carriers remain free to enter into negotiated agreements,
c. The division of regulatory oversight should be maintained,
d. There should be no increases in the Subscriber Line charge (SLC) cap,
e. No guaranteed access revenue replacement through mandated local service rate increases, and
f. This should not be considered the *final solution* without some additional opportunity for future review.

[14] The description of the NASUCA proposal is summarized from an attachment, *NASUCA Intercarrier Compensation Proposal,* to a December 17, 2004 ex parte letter filed in CC Docket No. 01-92 by Mr. McClelland on behalf of NASUCA.

The use of a two–tiered uniform target rate recognizes the cost causation that is clearly necessary to meet the underlying principles mandated by the Act. For example, the NASUCA proposal reduces both the average rural and urban intercarrier compensation rate from current levels, allowing the removal of many of the implicit subsidies that currently exist in interstate and intrastate access rates. The removal of these implicit subsidies is a necessary step to allowing the development of competitive markets – the ultimate goal of the Act.

The NASUCA proposal includes differing intercarrier compensation rates for rural carriers ($0.0095 per minute) and urban carriers ($0.0055 per minute). Although the Wyoming OCA is not commenting as to the validity of the intercarrier compensation rates presented by NASUCA in its proposal, the Wyoming OCA agrees that recognizing the differences in costs, through differential pricing, of urban carriers versus rural carriers is appropriate. This type of rate structure reflects, on a unified basis, the low densities and longer distances found in the rural areas.

A unified regime will not reflect the specific cost of transporting and terminating for each carrier as there continues to be a certain level of cost averaging in the proposed intercarrier compensation rates. However, the NASUCA proposal is a better reflection of the cost differences in transport and termination for a rural versus urban network. Having separate urban and rural rates will allow a rural carrier to recover its higher costs at a rate that is more representative of the cost of a rural network than a dense urban network. A cost based rate that is more analogous to an urban network utilized in a rural setting – such as the single nationwide rate included in several of the other proposals -- could significantly decrease the revenues for transportation and termination to an unpalatable level. Wyoming has worked to eliminate implicit subsidies and to accurately reflect the economic costs of providing service in its rates. Yet, as stated above, several Wyoming rural incumbents have cost based intrastate switched access rates of more than $0.07 per minute of use, driven by the common cost factors of distance and density. A decrease to around $0.005 could have a severe negative impact on the revenue streams for the rural carriers and inaccurately reflect the costs associated with a rural area.

It is the impact of the lost revenue that most worries the Wyoming OCA. While we are not in favor of an arbitrary guarantee of revenue for each impacted carrier, neither are we indifferent to the concept that upgrades and maintenance of high quality service comes with a cost – and sometimes a hefty cost in rural areas. For example, statistics offered by the Commission show that the average embedded loop cost in Wyoming (the second least dense state) is about twice ($444.90) that of the national average ($256.59).[15] Until there is a showing of robust ubiquitous competition nationwide – with the accompanying indication that customers are satisfied with their alternative choices – quality is an important aspect of regulation. As regulators, it would be disingenuous to require quality services without providing the means for recovering the costs associated with satisfying the mandate.

In the NASUCA proposal carriers remain free to enter into negotiated agreements. The OCA agrees that if carriers are able to enter into agreements at rates superior to those contained in the unified intercarrier compensation regime, those carriers should be free to do so. The state commissions have a duty to approve a negotiated agreement unless an agreement: discriminates against any carrier that is not a party to the agreement; the agreement is not consistent with public interest, convenience

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[15] Universal Service Monitoring Report. CC Docket No. 98-202. 2004. Table 3.34.

and necessity; or that the agreement does not meet the requirements set forth in section 251 of the Act.[16] Therefore, negotiated agreements will still be subject to public interest review as well as requiring the consent of the two parties.

The Wyoming OCA agrees with the NASUCA proposal in that the current state and federal jurisdiction will be required to remain unchanged. As stated above, this rulemaking cannot change the jurisdictional dichotomy as the Commission is unable to forbear from 47 U.S.C. 251(b)(5) because the three prong test in 47 U.S.C. 160(a) cannot be met and states may not have the legal authority to turn over their pricing regulatory oversight to another regulatory agency.

It is also in the public interest for the states to have a role in the regulation of both retail and wholesale prices, even though it makes the process more complex and less deregulatory. States bring their own localized and regional experiences as input in the decision making process. They are familiar with unique situations that may require special rate transitions. They are familiar with the push-pull relationship that occurs between wholesale and retail rate changes. They are aware of affordability issues relative to their citizens. The NASUCA proposal allows for the continued input of the states by allowing each state to "retain authority to reach the target rate in its own way."

We agree with the NASUCA proposal that there should be no increase in the subscriber line charge - but with some trepidation, given how unique the Wyoming circumstance is from that of most states. As the Commission has heard many times, Wyoming has taken many painful steps to open its market to competitors, including: raising local residential rates, equalizing

[16] 47 U.S.C. 252(e)(2).

business and residential rates (with few exceptions), reducing intrastate access rates, moving implicit subsidies to an explicit state universal service fund, and deaveraging local rates to better reflect costs. However, few other states, if any, have taken these same bold moves. Hence, the conflict we face on the issue of the appropriateness of SLC charges. For Wyoming end users, we are concerned about whether they can, or are willing, to shoulder additional cost increases – whether they come in the form of additional local rate increases or local increases in the form of a subscriber line charge. Thus our primary position that SLC caps should remain no higher than their current levels. As to other states, it would be our preference that they take steps similar to those taken by Wyoming to prepare for competitive markets – including eliminating large implicit subsidies of local rates -- rather than seeing the Commission *mandate* SLC increases to recover lost access revenues. We also are not in favor of the states being preempted on this matter. Thus, we prefer some sort of carrot-and-stick approach to addressing subsidies and cost-based local rates. NARUC has such a proposal of providing incentive to the states that is a concept we support – although perhaps not with each of the specific provisions contained in NARUC's suggested plan.

Our primary concern about the NASUCA proposal is its apparent incompleteness relative to its universal service funding and replacement revenue stream aspects. We agree that to simply add to the existing federal universal service fund, without additional revamping and careful review, is untenable given its current size and funding source. However, to assume that each state will be able to absorb the lost revenue due to the restructuring of intercarrier compensation is also untenable. Many states are able, and should, absorb much or all of the increase, given the ridiculously low existing local rates or the lack of any support through a state universal service mechanism. Yet, there are others, such as Wyoming, who are already at the point of being unable to certify that rates pass the urban comparability test. Some safety net must be provided to address the further revenue shift to these states with already extraordinarily high local rates.

The Wyoming OCA dare not suggest that it has the solution to the universal service problem, such that a safety net could be added without breaking the proverbial universal service fund bank. We do not. But, this is an issue that must be simultaneously addressed with the rate restructuring anticipated by the intercarrier compensation proceeding. Perhaps part of the answer lies in NASUCA's suggestion that lost revenues should not be automatically recovered "without any examination of the financial need of the carrier," although this suggestion is not without its practical problems, addressed below. If carriers or their customers had to submit to a *needs* test prior to receiving funds, the size of the fund might become more palatable. Perhaps there is a way to better target the money. Perhaps with additional auditing or more stringent certifications, the fund size would be reduced. Whatever the answer, all of the burden must not be placed on the shoulders of customers.

As to NASUCA's suggestion that additional funding, if any, be tied to an "examination of the financial need of the carriers," we wholeheartedly endorse this suggestion in its conceptual form. However, practical considerations may outweigh the conceptual benefits. This suggestion seems to imply that regulators should have some opportunity to determine whether additional federal revenue streams (in the form of universal service or otherwise) would simply be used to generate excessive profits for the local exchange carriers, or whether the funds are necessary and desirable in order to advance and preserve ubiquitous quality and affordable service. Again, we don't disagree that such a review would be consistent with being good stewards of federal and state customer generated funds. However, it is how such a review would take place that puzzles us. As the staff of regulatory bodies has aged, the problem of losing expertise in traditional skills such as auditing and earnings investigations has arisen. While the market continues to transition from one of monopolies to one that is effectively competitive, regulators' authority and mandates have changed – often not even permitting the type of earnings review anticipated by NASUCA. And most importantly, there are continuing data issues. As separations are frozen, as the uniform system of accounts is streamlined, as ARMIS is pared down, and more, the data previously used to determine revenue needs and appropriate earnings is being seriously eroded. If the Commission finds merit in NASUCA's suggestion, some of the real problems regarding data availability and access must be addressed.

NASUCA also suggests that whatever comes out of this proceeding relative to intercarrier compensation should not be deemed *the final solution*. NASUCA suggests that after five years, an assessment should be done to determine whether further changes are needed, given the state of the industry at that time. We agree. While many would like to think that any finding coming from this proceeding will still be relevant for an indefinite time into the future, others think that regulation is not required today, and thus, will certainly not be required in five years. The Wyoming OCA suggests that the answer is likely somewhere in the middle. The industry continues to evolve not only with the development of new technology, but also with new and improved application of that technology. Costs change with the changes in technology. But, costs also change as social needs change and as the level of competitiveness in the market changes. Unless and until the markets in both urban and rural areas have become effectively competitive, and regulatory oversight is no longer necessary, some process for periodic review of the regulatory scheme and appropriate rate levels should take place[17].

In summary, we find the NASUCA proposal worthy of consideration. But, there is a need for further discussion about federal and state universal service funding, and the appropriateness of the assumption that the federal revenue sources should not be looked to for assistance in replacing lost intercarrier compensation revenues.

NARUC Proposal

In an ex parte communication dated March 1, 2005, NARUC submitted version five of its *Intercarrier Compensation Proposal.* Summarizing the key pricing elements of NARUC's proposal[18]:

1. Interstate and intrastate rates for originating traffic should be zero.
2. Interstate and intrastate rates for terminating traffic on incumbent local exchange networks should be \$0.002 for wire centers with more than 5,000 lines, \$0.005 for wire centers with 500 to 5,000 lines, and \$0.01 for wire centers with less than 500 lines, unless carriers negotiate some other compensation

[17] For example, some suggest that explicit subsidies such as federal universal service funds are inconsistent with workable, effectively competitive markets. It is suggested that once fully developed, competition will keep prices at the appropriate and consumer-acceptable levels. Thus, if markets take a sudden, rapid leap toward further competitiveness, it would be reasonable to review the universal service aspects of the plan. Alternatively, if the transition to competitiveness stalls, then further provisions to assure quality networks are maintained may need to be incorporated.

[18] The NARUC proposal also contains numerous specific proposals regarding the administration and distribution of federal universal service funds that are not described herein.

agreement.[19] Competitive local exchange carriers would be allowed to charge no more than the rates mandated for the incumbent local exchange carriers.

3. The movement from current to the proposed rates should be accomplished over a period up to three years.
4. A *Rural Access Charge Transition Fund* should be created to offset reductions in rural eligible telecommunications carriers tariffed access charges, guaranteeing a minimum of three years of revenue neutrality, as long as that carrier's earnings are reasonable.
5. Non rural local exchange carriers would be permitted to increase their federal subscriber line charges up to the lesser of $3.00 or the amount of intercarrier compensation losses, but only if the carrier's state commission voluntarily agrees to participation in a system of unified intercarrier compensation charges.
6. The federal universal service fund should absorb the cost of rural local exchange carrier intrastate access charge reform that has occurred during the past five years.
7. The Federal-State Joint Boards on Universal Service and Separations should be consulted regarding plan implementation issues and impacts.

The NARUC proposal is a comprehensive plan that contains a number of sections, including provisions for intrastate and interstate uniform rate levels, technical provisioning, universal service funding, and jurisdictional divisions. The above summary of the plan is only intended to highlight some of the points important to Wyoming, and is not intended as a complete summary of NARUC's proposal. The Wyoming OCA does not intend to

[19] The NARUC proposal also contains a provision wherein per minute charges could be converted to equivalent capacity charges.

respond to each provision of the NARUC proposal, but will focus our comments on the rate and universal service provisions – although we very much appreciate NARUC's efforts to offer a complete package for comment.[20]

Overall, we recommend that the NARUC proposal is worthy of further consideration. Its pricing provisions move in the right direction, balancing the practical considerations (such as the ability to identify the origination or billing address of a call) with conceptually correct cost-based principles. The pricing provisions also recognize that as part of a transition to competitive markets, allowing parties to negotiate reasonable terms and conditions is better than the non-voluntary imposition of regulatory mandates, with the regulator continuing to do a reasonableness check of that negotiated agreement. We also appreciate the balanced approach that NARUC attempts to take relative to state and federal authority. The balance of not allowing the federal jurisdiction to usurp the state authority is important but so is the need for some national consistency in order to eliminate the market chaos that currently exists. Thus, the NARUC carrot and a stick approach may be the only reasonable alternative to achieving national uniformity. As to the universal service provisions of the suggested plan, we are generally supportive of the offered concepts, but have some concerns about a few of the specific provisions, especially in comparing some of Wyoming's rates and actions to those of other states.

Beginning with the category of rates, as we have already stated, we favor cost based rates. The NARUC proposal for a originating rate of zero is not cost based, as there are clearly costs placed on a carrier's network by the carriage of another provider's traffic. However, when we view the NARUC proposal as

[20] The OCA's comments are based on version five of NARUC's Proposal. We understand that there may be continuing discussions resulting in additional revisions and modifications to the earlier submitted proposal. Those items are not reflected in our comments.

part of a larger compromise, of which a zero origination charge is only one element, we find that it is not wholly objectionable. It is a practical solution in the context of a larger plan that does attempt to incorporate the principle of *cost causer pays.*

Similar to the NASUCA proposal, the NARUC proposal does not suggest that one-price-fits-all when it comes to termination charges. Instead, it proposes three different rate levels, depending on the size of the wire center served. We are supportive of this concept, for similar reasons as discussed above when supporting the NASUCA two-tiered concept. Rural carriers have many legitimate, cost-based reasons for incurring higher costs that need to be reflected as higher prices. It is unfair and inappropriate to assume that a higher cost is necessary because of inefficiencies or irresponsible spending. Rather, these higher costs are often driven by the lack of economies of scale.[21]

We do point out, however, that in spite of our general agreement with the multi-level of pricing necessary to reflect costs in different areas, we do not know from whence the specific numbers in the NARUC proposal were derived. Thus, we do not know if they represent the best and most proper prices for the three sizes of wire centers. We suggest that the overall impact on the industry be computed, including a showing of the current average termination rate by wire center size (or alternative, by size of carrier) and the average revenue loss that will ensue if the NARUC proposed rates are adopted. This information will better allow the Commission to assess the size of the problem, and the potential revenue shift to telecommunications

[21] We once again turn to densities to help explain these cost differentials. In looking at only the 14 state region served by Qwest, Arizona, Utah, and Washington each have lines per square mile that exceed 100, while Wyoming has an average of 6 lines per square mile. This is also shown in the average loop length. Using Qwest as an example: its average group of lines closest to its Wyoming central offices average 9,962 feet in length, while Qwest's average Wyoming loop length throughout the state is more than 19,000 feet. This distance not only impacts the cost of local rates, but also impacts transport and termination costs that are the subject of this proceeding.

provider shareholders, local customers, or the combination of state and federal universal service funds. Only with this type of information can the Commission make a reasoned decision as to appropriate transition time frames, likely impacts on the federal support system, and the benefit that will accrue to carriers using the networks of others.

The Wyoming OCA is also intrigued by the incentive approach to gaining state support for the unified intrastate and interstate prices contained in the NARUC proposal. This incentive, of either complying or risking loss of the receipt of additional federal support, is what we have referred to as the carrot-and-the-stick approach. It is also not unlike what we have seen done relative to federal fund distributions to states in other areas.[22] We wish that this type of arm-twisting of the states was not necessary, and that instead, the states would do the right thing by voluntarily moving to cost based rates. However, in the nearly ten years that the Act has been in place, this has not happened in any widespread manner. States have continued to use various forms of implicit subsidies – particularly keeping intrastate access rates high, which has aggravated the arbitrage problem. Unless states have a reason to reduce their intrastate access rates, the problem will continue. As we believe it is both illegal and bad policy for the Commission to preempt the states' rights regarding intrastate pricing, NARUC has offered a creative solution relative to the problem.

The Wyoming OCA does have a concern relative to state incentives and the universal service fund issue. NARUC's Universal Service provisions include item 8, which discusses a national benchmark level for local exchange

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[22] For example, some states put some of their federal highway funds at risk a few years back, by being in non-compliance with federal guidelines for drunk driving blood alcohol levels. As in this plan, additional federal funds would be available, if states abided by pre-established federal directives.

network cost recovery. As explained, this is necessary in order to overcome "the objections many have with providing support to LECs with very low local rates." It is not clear, though, what happens to those companies/states with very high local rates, such as Wyoming. One-third of Qwest's customers pay an average local rate that is more than $8 per line per month more than the national average residential local rate.[23] Several of the Wyoming rural local exchange companies have rates as high or higher than those of Wyoming's Qwest customers. While we are concerned that these rate levels currently fail the urban comparability test required in 47 U.S.C. 254, we also believe it would be a step back to require that these rates be arbitrarily reduced to a nationwide standard that had no relationship to costs to serve in Wyoming. We are concerned that this proposal may be intended to strive for a nationwide average local exchange rate. This is not a goal that we support. Yet, we do need further clarification of what support would be available to companies with these higher rates.

Several of our above comments contained within our discussion of the NASUCA proposal, are also appropriate in discussing the NARUC plan. For instance, there is language in both plans about certain revenue loss funds being available but only if there is a determination that company's earnings are reasonable. Again, we support the concept, but worry whether such an earnings review could practicably be accomplished in today's environment.

We also have similar concerns as those expressed above about finding other sustainable sources of revenue to replace the current access charge revenues that will be lost under any of the proposals. The NARUC plan, as do many of the other plans, shifts much of this revenue recovery to the federal universal

[23] See *Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-rural Incumbent Local Exchange Carrier*, CC Docket No. 96045, submitted December 21, 2004.

service fund and to subscriber line charges. As noted above, we worry about simply shifting more and more to the federal universal service fund, without some major revamping of that fund – even though Wyoming is a net recipient of the fund (and even at that, is under funded as defined by federal law.) We also worry that customers will not, and should not be required to bear more and more costs through flat rated bill charges (charges that are not *technically* local service charges, but certainly quack and waddle like a local service duck.) We worry that interstate carriers who will now have reduced intercarrier compensation rates will simply be able to pocket that savings, since the rate shifts will be funded directly by end users. For these reasons, we again urge that the reexamination of the federal universal service fund occur simultaneous with the reexamination of intercarrier compensation. The NARUC proposal begins to do this by recommending a different funding source than exists for the fund today, and by suggesting that additional distributions would be in the form of block grants to a state to be allocated by the state commission. However, we are suggesting much more. We suggest a whole new look at how support is provided[24], to whom it is provided, a re-look at why and for what purposes it is needed,[25] and whether additional transitions consistent with movements toward competitive markets are warranted. This should not simply be more of what is in place today. While we anticipate that many will be surprised at a net recipient state suggesting such a drastic move, we believe that it is the only way that federal support to rural states and rural customers will be sustainable in the long run.

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[24] For example, we offer simply for purposes of generating discussion: should the funds be offered directly to customers rather than carriers, or alternatively, to economic development programs to use in the form of grants, rather than offering it to incumbent and competitive providers in specific regions of the country?

[25] For example, we offer for thought-provoking purposes only: should there simply be a much expanded Lifeline and Link-up program, with perhaps a limited safety net for non-poor customers in high cost areas where there are no or limited alternative providers with comparable services?

Lastly, NARUC suggests that the Joint Boards should have a role in determining the implementation of any principles and directives that come from the Commission as a result of this proceeding. While it is appropriate to listen to the state regulators and consumer advocates on the Joint Boards, given their specific experiences and expertise, we are very troubled that the advisory role would come so late in the decision-making process. The suggestion once again appears to cast aside the states' expertise in their specific area of the nation and lawful rights of their respective regulatory roles. If the states and Joint Boards are to have a role, it should be one of early data analysis (so that decisions are not being made without knowing their impact), or one of providing thoughtful input into the policy recommendations decided by the Commission.

In summary, we find overall the NARUC proposal to be reasonable, but would prefer to see some further modifications to universal service funding associated with the suggested rate rebalancing, in order to assure some stability and sustainability of funds necessary to maintain quality networks and affordable rates. We find the NARUC plan to be a good starting point, but should not be adopted without further modification, as described above.

Conclusion

The Wyoming OCA appreciates the opportunity to provide its thoughts on intercarrier compensation as the Commission continues its work to reform the current system. While we are not advocating for the wholesale adoption of any of the many plans submitted for your consideration in this case, we find the NASUCA and NARUC proposals to be the most reasonable starting points. We are not supportive of a bill-and-keep approach and find that its adoption would be inconsistent with current federal and state law.

Respectfully submitted,

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